

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Haviland Telephone Co., Inc.,	)	
	)	File Number EB-02-KC-331
Owner of Antenna Structure Registration	)	
No. 1033509	)	NAL/Acct. No.200232560009
	)	
Haviland, Kansas	)	FRN 0005-0815-67
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: June 13, 2002**

By the Enforcement Bureau, Kansas City Office:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture, we find that Haviland Telephone Co., Inc. ("Haviland"), owner of antenna structure number 1033509 at Haviland, Kansas, willfully violated Section 17.21 of the Commission's Rules ("Rules"),<sup>1</sup> by failing to exhibit the prescribed painting. We find Haviland apparently liable for forfeiture in the amount of ten thousand dollars (\$10,000).

**II. BACKGROUND**

2. On May 16, 2002, an agent of the FCC's Kansas City Field Office inspected Haviland's antenna structure number 1033509 in Haviland, Kansas. The structure's height was 122 meters (400 feet), thus requiring painting and lighting. The antenna structure was unpainted, there were no daytime obstruction lights in operation, and there was no antenna structure registration ("ASR") number visible at or near the base of the tower. The ASR and the Federal Aviation Administration ("FAA") records for this structure both prescribe that red obstruction lighting and paint be exhibited on the structure.

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<sup>1</sup> 47 C.F.R. § 17.21.

### III. DISCUSSION

3. Section 17.21 of the Rules requires that antenna structures shall be painted and lighted when they exceed 60.96 meters (200 feet) in height above the ground or they require special aeronautical study. On May 16, 2002, Haviland's antenna structure number 1033509 required painting because it exceeded 200 feet in height and painting was prescribed by both the FCC and FAA, yet the structure was unpainted.

Based on the evidence before us, we find that, on May 16, 2002, Haviland willfully<sup>2</sup> violated Section 17.21 of the Rules by failing to paint the tower as required.

4. Pursuant to Section 1.80(b)(4) of the Rules,<sup>3</sup> the base forfeiture amount for failure to comply with prescribed painting is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>4</sup> Considering the entire record and applying the factors listed above, this case warrants a \$10,000 forfeiture.

### IV. ORDERING CLAUSES

5. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>5</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>6</sup> Haviland Telephone Co., Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful violation of Section 17.21 of the Rules by failing to exhibit the prescribed painting on its antenna structure.

6. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the RELEASE DATE of this NOTICE OF APPARENT LIABILITY, May 23, 2002, Haviland Telephone Co., Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

7. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be

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<sup>2</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>3</sup> 47 C.F.R. § 1.80(b)(4).

<sup>4</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>7</sup>

8. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. and FRN referenced above.

9. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

10. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by regular mail and Certified Mail Return Receipt Requested to Haviland Telephone Co., Inc., P.O. Box 308, Haviland, Kansas 67059-0308.

FEDERAL COMMUNICATIONS COMMISSION

Robert C. McKinney  
District Director  
Kansas City Office

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<sup>7</sup> See 47 C.F.R. § 1.1914.